

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.321 OF 2004

National Textile Corporation

...Petitioners

v/s

Mahipat Y. Kamble and anr.

...Respondent

Mr Shirish K. More i/b Mr S.M. Naik for Petitioners.

Ms U.R. Tiwari for Respondent No.1.

CORAM : D.K. DESHMUKH J.

DATE : 24TH JULY 2006.

**P.C.**

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1. By this petition, the petitioners challenge the order passed by the Labour Court dated 23rd December 2002 directing the petitioners to pay an amount of Rs.94,162/- with interest at the rate of 10 % p.a. The only ground on which the order is challenged is that according to the petitioners, the services of the respondent No.1 were terminated under section 33(2) of the Industrial Disputes Act and the Labour Court could not have passed the order without adjudicating upon the existing right and validity of termination order and the order under section 33-C(2) regarding payment of wages could not have been made. Perusal of the reply filed on behalf of the petitioners before the Labour Court shows that the case of the petitioners before the Labour Court was that there was an understanding between the Trade union and the Mill Owners' Association to the effect that all employees who reported on duty on or before 31st May 1982 would be taken in employment and others ceased to be in the employment. According to the petitioners, therefore, as the respondent No.1 did not report on duty on or before 31st May 1982, his services were terminated. Now, for establishing this, basically what was to be established by the petitioners was that the respondent No.1 was a member of the Union with whom

oral understanding was reached. One does not find any pleading to that effect anywhere in the reply. Therefore, the fact which constitutes termination of service according to the reply filed by the petitioners has not been established by the petitioners. It was argued before me that there were public notices issued after the general textile strike was declared as illegal for the workers to resume duty and as the respondent No.1 did not resume pursuant to those notices, his services are deemed to have been terminated. Perusal of the written statement filed by the petitioners shows that there is reference to the issuance of public notice, but it is nowhere pleaded that in that public notice, it was stated that if the workers do not resume, their services will be deemed to have been terminated. Thus, perusal of the order of the Labour Court shows that the Labour Court has considered entire evidence on record and has recorded a finding that the petitioners have failed to prove that the services of the respondent No.1 were terminated. As the petitioners have failed to establish that the services of the respondent No.1 were terminated, there is no question of there being any adjudication by the Labour Court or by any other Court on the validity or otherwise of the termination. As the petitioners have failed to establish as a fact that the termination of the services of the respondent No.1 was brought about, the relationship of master and servant

continued between the parties and therefore, the Labour Court was perfectly within its power under section 33(2) of the Industrial Disputes Act in making the order of payment of wages. One more aspect which is relevant is that considering that this petition is filed under the extraordinary jurisdiction of this Court and only an amount of Rs.94,162/- is directed to be paid to the respondent No.1, who is a labour, in my opinion, it will not be in the interest of justice for this Court to interfere with the impugned order. Petition therefore fails and is dismissed, rule is discharged with no order as to costs.

2. At the request of the learned counsel appearing for petitioners, it is directed that despite dismissal of the petition, the interim order passed in this petition shall continue for a period of four weeks from today. In case the petitioners do not produce appropriate order of superior Court contrary to this, on expiry of period of four weeks as mentioned above, the Office shall permit the respondent No.1 to withdraw the amount of Rs.50,000/- deposited in this Court pursuant to the order dated 8th March 2004 with accruals if any.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.